

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





15-2144

ORIGINAL

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

RONALD BURGIN  
a/k/a Hasan Jamal Abdul Majid and  
BILLY SANDIFER  
a/k/a Mukhtar Abdul Wali,

Plaintiffs-Appellants,

-against-

ROBERT J. HENDERSON, Superintendent of  
Auburn Correctional Facility and BENJAMIN  
WARD, Commissioner of New York State  
Department of Correctional Services,

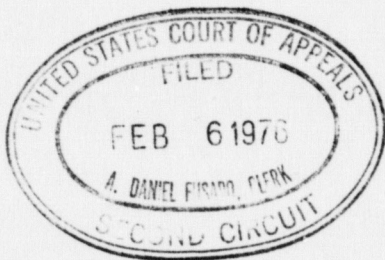
Defendants-Appellees.

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No. 75-2144

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APPENDIX

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PLAINTIFFS

DEFENDANTS

MAJID, HASAN JAMAL ABDUL a/k/a  
BURGIN, RONALD, WALI, MUKHTAR  
ABDUL a/k/a SANDIFER, BILLY, etc.

HENDERSON, ROBERT J., et ano.

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CAUSE Plaintiffs allege that their religious beliefs are being interfered with in that they are prohibited from wearing beads, etc.

ATTORNEYS


75-2144

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DATE 1975	NR.	
July 15	1	Filed civil rights complaint
" 15	2	Filed Memorandum-Decision and Order of Judge Port (7/11/75) denying and dismissing the civil rights complaint. The clerk is directed to file the civil rights complaint without payment of fees.
" 15	3	Filed Judgment
Aug. 13	4	Filed Notice of Appeal & related papers

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES EX. REL. HASAN JAMAL ABDUL MAJID :  
A/K/A-RONALD BURGIN :

AND :  
MUKHTAR ABDUL WALI-A/K/A-BILLY SANDIFER :  
Prisoners of the State Correctional Facility at :  
Auburn, New York on behalf of themselves and all :  
others similarly situated. :

Plaintiffs

-Vs-

ROBERT J. HENDERSON, Superintendent of the :  
Auburn Correctional Facility at Auburn, New York :

BENJAMIN WARD, Commissioner of the Department of :  
Correctional Services of the State of New York :  
at Albany, New York, et al. :

Defendants. :

-----X  
Complaint for Declaratory Judgement; Injunctive  
Relief and Damages.

Complaint  
: CIVIL ACTION  
No. \_\_\_\_\_

# 1. Jurisdiction

1. Jurisdiction of this Court is invoked pursuant to and in accordance with the provision of Title 28 U.S.C. sec. 1343, 2201, and 2202; 42 U.S.C. sec. 1983, and The Constitution of the United States, specifically but not limited to the First, Fifth, Eighth and Fourteenth Amendments thereto.



## 2. Plaintiffs

2. Plaintiffs Hasan Jamal Abdul Majid-A/K/A-Ronald Burgin and Mukhtar Abdul Wali-A/K/A-Billy Sandifer, are and at all times mentioned herein are Prisoners of the State of New York, in the custody of New York State Department of Correction, currently confined at Auburn Correctional Facility, Auburn, New York.

## 3. Defendants

3. Robert J. Henderson is the Superintendent of Auburn Correctional Facility and is responsible for the general supervision and administration of that Facility, including Religious activities therein. He presently has custody of Plaintiffs Hasan Jamal Abdul Majid A/K/A- Ronald Burgin and Mukhtar Abdul Wali A/K/A-Billy Sandifer.

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4. Benjamin Ward is the Commissioner of the Department of Correction of New York State, and as such is responsible for the supervision of the Penal System and the creation and promulgation of Rules and Regulations governing the system, including Religious Activities within the State of New York.

All defendants are sued individually and in their capacity as State Officials.

4. Class Actions

5. Plaintiffs Hasan Jamal Abdul Majid-A/K/A-Ronald Burgin and Mukhtar Abdul Wali-A/K/A-Billy Sandifer are Sunni (Orthodox) Muslims of the Islamic Religion, a class of prisoners consisting of the following, those presently confined at Auburn Correctional Facility and those who will in the future be confined at Auburn Correctional Facility who request or will request to wear beards and prayer caps in accord with religious Law and Custom (Usage). Plaintiffs Hasan Jamal Abdul Majid-A/K/A-Ronald Burgin and Mukhtar Abdul Wali-A/K/A-Billy Sandifer bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and all persons constituting the above described class who are similarly situated. The persons in this class are so numerous that joinder of all members is impractical. There are questions of Law and Fact common to the class, the claims of the Representatives will fairly display that they are typical of the claims of the class, and the Representatives will also fairly and adequately protect the interest of the class.



## 5. Statement of Facts

On or about the date of February 26th, 1975, a letter was received by Hasan Jamal Abdul Majid-A/K/A-Ronald Burgin said plaintiff from James F. Howser, Assistant Director Ministerial Ser-

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III

vices, State of New York Department of Correctional Services Albany, New York, in reference to the controversial question of wearing of beards by Sunni Muslims as an important part of their religious adherence. The said representative of the Department of Correctional Services stated in effect that the wearing of beards in New York State Prisons was against Department Policies, however the question of what policy and why, was left unanswered. Also on February 19th, 1975 an Inter-Departmental Communication from Deputy Superintendent of Programs J.W. Kennedy-Auburn Correctional Facility: was received by Hasan Jamal Abdul Majid-A/K/A-Ronald Burgin said plaintiff, in regards to the wearing of the beards, in such Communication Item No. 6 the request to wear beards was also denied.



In contrast to the Administrations position in regards to the Religious observance of wearing beards is the fact that Correctional Officers at this Prison, Auburn State Prison wear beards of considerable length whether for Religious purposes or not. Some of these Correction Officers' are: C.O. William Brahney; C.O. William Wilcek; C.O. Jerry Guiney; C.O. Mark Wrobel; C.O. Joseph Schmidt:- to just name a few. Since Correctional officers are to serve as examples for inmates the Administrations position in regard to the wearing of beards by all Sunni Muslims demands clarity especially where such denials infringe on the rights and practices of Sunni Muslims Religiously. It is stressed here that the wearing of beards by Sunni Muslims is a Religious obligation and in no way, fashion or form is it a style (fad) nor does it threaten the Prison security since it is a "Religious observance". And all 'Religious observances' are monitored by Prison Officials. The aspect of sanitation presents no problem to all Sunni Muslims since they must cleanse themselves five (5) times daily and this includes the face and beard. Restrictions are also placed on Sunni Muslims wearing their prayer

## IV

hats which does not only serve as a means of a garment for prayer but it is an intricate part of our Religion. Prison Officials have constantly brought undue pressure against all Sunni Muslims, by telling them that they cannot wear their prayer hats which is as much a Religious observance as praying five (5) times a day. The defendant Mr. Robert J. Henderson, has on a number of occasions established policies that would prohibited Sunni Muslims from wearing their prayer hats at all times; whereas handkerchiefs and other kinds of things are worn in these so called Administrative places. Different kinds of disciplinary actions has been taken by Prison officials; which are directly from Defendants and made to be enforced by these same Prison officials.



Another area and point in controversy is Prayers (Salat). All Sunni Muslims are enjoined by the Law of Islam to perform their Prayers-five (5) times a day and at fixed hours. These fixed hours are: Early Morning; Afternoon; late Afternoon; Early Evening; and late Evening. In Islam prayers are constituted by Standing, Bowing, and Prostrating, without any one of these forms the prayers (Salat) would be incomplete in form. And form does make a difference. The Administration here at Auburn Correctional Facility and Albany are deliberated all of these problems before and they are still deliberately refusing Sunni Muslims access to their religious obligations, which are not security 'risk' or threat. As it is, Defendant Robert J. Henderson and other Prison officials have made it a part of their duties to totally isolated tactics against all Sunni Muslims, by preventing them from performing our Prayers (Salat) in there Prescribed Manner;-Standing, Bowing, and Prostrating. These are among the policies of the Prison officials as sanctioned by Defendant Robert J. Henderson and Benjamin Ward. Islamic Religious Law has established for Sunni Muslims that prayer (Salat) in congregation should not be averted and without the different forms of Worship and conglomerate prayer worship then

## V

there is no Prayer (Salat). It is not a question of whether or not Sunni Muslims should or should not say Prayers (Salat), they must without question observe this duty and command and keep up all their Prayers and other obligations. These same Islamic Religious Laws; are maintained by some nine-hundred and fifty million (950,000,000) Sunni Muslims all over the world and with no compromise or innovation. Regardless of how others may maintain the Laws of Islam, Sunni Muslims here at Auburn Correctional Facility and other State Facilities are remaining steadfast to the Laws of Islam as they are arranged in the Holy Qur'an and Hadiths (Hadiths being the example and actual way on which certain things should be done; as put forth in the actions of the Holy Prophet Muhammad Ibn Abdullah FBUH), which are the Only outstanding Books of Law that Sunni Muslims follow in regard to their religion (Islam); their forms of Worship, Conduct, and commands. ||



## 6. Causes of Action

6. Defendants, under color and guise of laws and regulations have individually subjected Plaintiffs and the classes they represent to be deprived of certain rights, secured to them by the Constitution and laws of the United States.
7. Defendants have deprived Plaintiffs Hasan Jamal Abdul Majid-A/K/A-Ronald Burgin and Mukhtar Abdul Wali-A/K/A-Billy Sandifer of rights guaranteed to them by the First and Fourteenth Amendments to the United States Constitution, by arbitrarily, capriciously and unlawfully denying them their rights, specifically to freely practice their religion.
8. Defendants have deprived plaintiffs Hasan Jamal Abdul Majid-A/K/A-Ronald Burgin and Mukhtar Abdul Wali-A/K/A-Billy Sandifer and the classes they represent of liberty without due process of law as guaranteed by the fifth and fourteenth Amendments to the United States Constitution in denying them the free exercise

## VI

of speech and religion set forth more fully in paragraphs forty-eight (48) through fifty (50) of the United States Constitution.

9. Plaintiffs and the classes they represent have suffered and will continue to suffer immediate, great and irreparable injury to their most precious first Amendment rights as a result of the activities of defendants recited in the foregoing paragraphs and there is not any adequate remedy at law available to them.
10. According, unless this Court restrains the unconstitutional actions of Defendants, the individual Plaintiffs and the classes of people they represent will continue to suffer the most serious, immediate and irreparable injury in that they will continue to be deterred, intimidated, hindered and prevented from exercising elementary and fundamental Federal Constitutional rights.

WHEREFORE, Plaintiffs respectfully pray that this Court, on behalf of prisoner plaintiffs and the classes they represent:

1. Enter an Order

- (a) Granting a Temporary restraining order, restraining and enjoining defendants, their successors in office and all of their agents, from any further interference with the exercise of protected first Amendment activities by Plaintiffs Hasan Jamal Abdul Majid-A/K/A-Ronald Burgin and Mukhtar Abdul Wali-A/K/A-Billy Sandifer.



(b) Granting a Temporary restraining order, restraining and enjoining defendants, their successors in office, and all of their agents from any harassment, intimidation, institutional transfer, or retaliation against all plaintiffs, their attorneys, and their agents, as well as, against the classes of persons that prisoner plaintiffs represent.

(c) Enter a declaratory judgement pursuant to Title 23 U.S.C. sec. 2201 declaring that the following acts of defendants

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## VII

and their agents deprived plaintiffs and the classes they represent of rights guaranteed to them by the first, Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

- (i) Unlawfully preventing, interfering with and depriving Plaintiffs from wearing Prayer Hats.
- (ii) Unlawfully denying to Plaintiffs Hasan Jamal Abdul Majid-a/k/a-Ronald Burgin and Mukhtar Abdul Wali-a/k/a-Billy Sandifer and the classes they represent their religious symbols.
- (iii) Unlawfully preventing Plaintiffs their right to perform their Prayer (Salat) in the prescribed manner as dictated by their religion.
- (A) Granting all Plaintiffs herein and the classes they represent judgment against the defendants and each of them, jointly and severally in an amount to be determined by a jury for the deprivations of constitutional rights; and granting all Plaintiffs and the classes they represent judgment against the defendants and each of them, jointly and severally in an amount to be determined by a jury as punitive damages for the aforesaid conduct;



- (B) Granting a jury trial for damages as a matter of right, as well as for all other issues Triable by a jury by right, or in the alternative granting the impanelling of an advisory jury for the determination of issues for which a request is made:
- (C) Granting any and all such other relief as this Court deems proper.

Respectfully submitted

*Hasan Jamal Abdul Majid a/k/a Ronald Burgin*  
Hasan Jamal Abdul Majid-a/k/a-  
Ronald Burgin #65938  
135 State Street  
Auburn, New York 13021

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VIII

*Mukhtar Abdul Wali - Billy Sandifer*

Mukhtar Abdul Wali-a/k/a  
Billy Sandifer #63198  
135 State Street  
Auburn, New York 13021

Plaintiffs pro se

Sworn to before <sup>me</sup> ~~us~~ this

7 day of March 1975

*Elaine A. Graves*  
NOTARY PUBLIC

ELAINE A. GRAVES  
Notary Public, State of New York  
Cayuga County #1436  
My Commission Expires March 30, 1977



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

UNITED STATES ex rel. HASAN JAMAL ABDUL MAJID  
also known as RONALD BURGIN,

UNITED STATES ex rel. MUKHTAR ABDUL WALI  
also known as BILLY SANDIFER  
Prisoners of the State Correction Facility at  
Auburn, New York on behalf of themselves and  
all others similarly situated,

Plaintiffs,

-vs-

75-CV-

ROBERT J. HENDERSON, Superintendent of the  
Auburn Correctional Facility at Auburn, New  
York.

BENAJMIN WARD, Commissioner of the Department  
of Correctional Services of the State of New  
York at Albany, New York, et al.,

Defendants.

EDMUND PORT, Judge

Memorandum-Decision and Order

The Clerk of the court has sent to me for my consideration  
a civil rights complaint<sup>1</sup> together with an affidavit in forma  
pauperis and for the assignment of counsel from state inmates  
presently confined in the Auburn Correctional Facility, Auburn,  
New York.

The plaintiffs allege that they are Sunni (Orthodox) Muslims  
and that their religious rights are being interfered with in that:

1. Which is sought to be prosecuted as a class action.

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they are prohibited from wearing beards; they are not allowed to wear their "prayer hats" at all times; they are not fully allowed to carry out their "prayers", which involve standing, bowing, and prostrating, which allegedly must be performed five times a day. Declaratory, injunctive and monetary relief is sought.

In connection with the claim made regarding beards, prison regulation regarding beards, including the prohibition of the same, are constitutional.<sup>2</sup>

In connection with the other claims made regarding interference with the observation of the Muslim Religion, the Department of Correction has established thorough and comprehensive rules and regulations to ensure that members of the Muslim Faith have the same religious rights and privileges as extended to other denominations. See 7 N.Y.C.R.R., Chapter II, §§59.10-59.23. These rules and regulations are reasonable and allow such freedom of religious observance and participation as is consistent with a maximum security penal institution.<sup>3</sup> Accordingly, the complaint is denied and dismissed in all respects.

For the reasons herein, it is

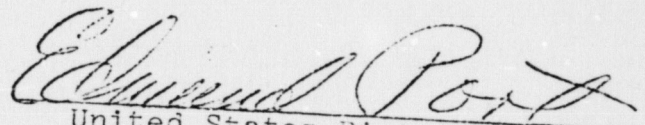
ORDERED, that the complaint herein be and the same hereby is denied and dismissed. Leave to proceed in forma pauperis is

<sup>2</sup> Blake v. Pryse, 444 F.2d 218 (8th Cir. 1971); Rinehart v. Brewer, 491 F.2d 705 (8th Cir. 1974); Williams v. Batton, 342 F.Supp. 1110 (E.D.N.C. 1972); Collins v. Haga, 373 F.Supp. 923 (W.D. Va. 1973); Sekou v. Henderson, 73-CV-543 (N.D.N.Y. Dec. 4, 1973) (unreported) aff'd (without opinion) by Second Circuit Court of Appeals on May 3, 1974 under docket no. 74-1187; but see Sostre v. Preiser, docket no. 75-2036 (June 19, 1975; 2d Cir.).

<sup>3</sup> The complaint does not allege that the Facility has failed to afford Muslims the rights and privileges afforded by the Departmental rules and regulations.



granted, and the Clerk is directed to file the papers herein without the payment of the prescribed fees.

  
United States District Judge

Dated: July 11, 1975  
Auburn, New York.

**United States District Court**

FOR THE

Northern District of New York

CIVIL ACTION FILE NO. 75-CV-341

United States ex rel. Hasan Jamal Abdul Majid  
also known as Ronald Burgin, et ano.,

vs. Plaintiffs,

Robert J. Henderson, Superintendent of the Auburn  
Correctional Facility at Auburn, New York, et al.

JUDGMENT

## Consideration

This action came on for ~~RECONSIDERATION~~ before the Court, Honorable Edmund Port

, United States District Judge, presiding, and the issues having been duly tried

Considered

~~RECONSIDERATION~~ and a decision having been duly rendered,

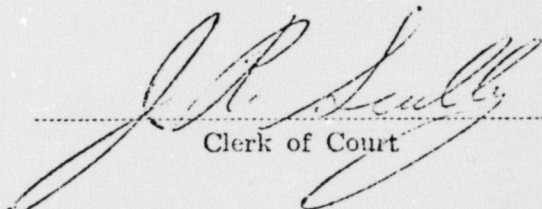
It is Ordered and Adjudged that the civil rights complaint is denied and dismissed.

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Dated at Utica, New York  
of July , 19 75.

, this 15th day

  
Clerk of Court

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